

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SMART TRIKE USA, LLC,

Plaintiff,

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Civil Action No. 10-2063(FSH)(PS)

HEINZ KETTLER GMBH & CO. KG,
et al.,

Defendants.

ORDER ON INFORMAL APPLICATION

This matter having come before the Court by way of letters dated January 31, 2011 and February 3, 2011, regarding plaintiffs' request that the Court grant an application to obtain discovery in foreign countries and the defendants' opposition thereto;

and these letters reflecting that: (1) there was no discussion between plaintiffs and defendant to determine if defendants had a position concerning the request and/or to include information that defendants may seek for the individuals or entities from whom plaintiffs seek information and (2) no effort on the part of the defendants to meet and confer with the plaintiffs before submitting its objections¹ to the Court;

and the Court having a protocol for presenting discovery disputes;

and the submissions failing to comply with the protocol and the meet and confer

¹The Court notes that one of the objections is purportedly based upon a contract between defendants and an individual and entity that they not assist anyone (directly or indirectly) in contesting the validity or enforceability of the patent in suit. The Court questions whether the law or public policy would allow a private agreement between private entities to bar formal discovery sought pursuant to a court order.

requirement set forth in L. Civ. R. 37.1 and the Pretrial Scheduling Order;

IT IS THEREFORE ON THIS 3rd day of February, 2011

ORDERED that no court action will be taken on the applications and/or letters dated January 31, 2011 and February 3, 2011 and the requests for relief embodied therein is denied without prejudice to being presented after the parties engage in a good faith effort to resolve the disputes and if unresolved, presentation of the disputes in accordance with the joint letter protocol. Said disputes shall be presented no later than **February 10, 2011 at noon**; and

IT IS FURTHER ORDERED that if a party seeks to commence foreign evidence collection, then it shall notify all other parties so that they may add to the request any information that such party may seek from the same person or entity as this will avoid multiple demands upon these nonparties; and

IT IS FURTHER ORDERED that all other deadlines shall remain in full force and effect.

s/Patty Shwartz
UNITED STATES MAGISTRATE JUDGE